

by member basis. As a result, if a person or entity owns more than one membership on the CHX, it is possible for that person or entity to qualify for the exemption for one membership (by not having a nominee and not otherwise using the membership), but not qualify for the exemption for another membership owned by that person or entity.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(4) of the Act in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members and issuers and persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective on May 1, 1997, the date of receipt of this filing by the Commission, pursuant to Section 19(b)(3)(A)(ii) of the Act³ and paragraph (e) of Rule 19b-4⁴ thereunder, because it establishes or changes a due, fee, or other charge imposed by the Exchange.

At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements

with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. CHX-97-7 and should be submitted by June 6, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁵

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-38602; File No. SR-DTC-97-04]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change to Increase the Size of the Board of Directors

May 9, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on April 29, 1997, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR-DTC-97-04) as described in Items I and II below, which items have been prepared primarily by DTC. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to grant accelerated approval of the proposal.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will amend DTC's organization certificate and by-laws to increase the maximum number of directors on DTC's board from fifteen to twenty and to increase the current membership of DTC's board from fifteen to seventeen directors.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments that it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.²

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Currently, DTC's organization certificate and by-laws provide that DTC's board may consist of from five to fifteen directors. At its March meeting, DTC's board decided that National Securities Clearing Corporation ("NSCC") President David M. Kelly should join DTC's board and that William F. Jaenike, DTC's Chairman and Chief Executive Officer, should join NSCC's board and sit on that board's executive committee. In order to accommodate the addition of Mr. Kelly and to allow for possible limited future expansion of the board, at DTC's April 1, 1997, board meeting, the board approved an increase in the maximum number of directors from fifteen to twenty and an increase in the current membership of the board from fifteen to seventeen. The seventeenth director is expected to be a banker in order to maintain the balance of DTC board membership between representatives of banks and broker-dealers that has been in existence for many years. DTC has filed a letter application with the New York State Banking Department ("NYSBD") seeking approval for DTC to amend its organization certificate to allow for a maximum of twenty directors on DTC's board. In addition to filing an application with the NYSBD, DTC will be asking its shareholders to vote to approve the amendments to the organization certificate and the by-laws, to elect individuals to fill the newly created seats on DTC's board, and to approve the certificate of amendment.

DTC believes the proposed rule change is consistent with the requirements of Section 17A(b)(3)(F)³ of the Act and the rules and regulations thereunder in that the proposal should

² The Commission has modified the text of the summaries submitted by DTC.

³ 15 U.S.C. 78q-1(b)(3)(F).

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(e)(1991).

⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments from DTC participants have not been solicited or received on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(B)(3)(F) of the Act requires that the rules of a clearing agency must be designed to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions.⁴ By enabling a representative of NSCC to serve on DTC's board, NSCC and DTC will be better able to coordinate their activities. Such coordination may assist both entities in fulfilling their statutory mandates in a more efficient manner. Thus, the Commission believes that DTC's proposal in consistent with Section 17A(B)(3)(F) of the Act.

DTC requests the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing. The Commission finds good cause exists for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing because accelerated approval will permit the new directors to be elected at a shareholder's meeting scheduled for the middle of May.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the

proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of DTC. All submissions should refer to the file number SR-DTC-97-04 and should be submitted by June 6, 1997.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-DTC-97-04) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁵

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-38600; International Release No. 1078; File No. SR-DTC-96-13]

Self-Regulatory Organizations; The Depository Trust Company; Order Temporarily Approving a Proposed Rule Change Relating to the Admission of Non-U.S. Entities as Direct Depository Participants

May 9, 1997.

On July 12, 1996, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR-DTC-96-13) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") to establish standards for the admission of non-U.S. participants.¹ Notice of the proposal was published in the **Federal Register** on September 12, 1996.² On May 5, 1997, DTC filed an amendment to the proposed rule change.³ No comment letters were received. For the reasons discussed below, the Commission is temporarily approving the proposed rule change through May 31, 1998.

¹ 17 CFR 200.30-3(a)(12).

² 15 U.S.C. 78s(b)(1).

³ Securities Exchange Act Release No. 37652 (September 5, 1996), 61 FR 48187.

⁴ Letter from Larry E. Thompson, Senior Vice President and Deputy General Counsel, DTC, (May 5, 1997). This amendment was technical in nature and did not require republication of notice.

I. Description

The rule change amends DTC's current participant admissions policy to permit entities that are organized in a country other than the United States and that are not otherwise subject to U.S. federal or state regulation ("non-U.S. entities") to be eligible to become direct DTC participants.⁴ Under the rule change, DTC will require that the non-U.S. entity execute the standard DTC participants agreement and enter into an additional series of undertakings⁵ and agreements that are designed to address jurisdictional concerns, sufficiency of collateral, and to assure that DTC is provided with audited financial information that is acceptable to DTC.⁶ In connection with a non-U.S. firm executing the participants agreement and entering into such undertakings, DTC will require appropriate opinions of counsel, satisfactory to DTC, that state, among other things, that all such undertakings and agreements are legal and enforceable against the non-U.S.

⁴ In determining whether to grant access to its services, DTC's 1990 "Policy Statement on the Admission to Participant's" ("1990 Policy Statement") considers whether the applicant is subject to comprehensive U.S. federal or state regulation to be a critical factor. See Securities Exchange Act Release No. 28754 (January 8, 1991), 56 FR 1548 (order approving proposed rule change regarding 1990 Policy Statement). Such regulation includes, among other things, capital adequacy, financial reporting and recordkeeping, operating performance, and business conduct of the applicant. Under the 1990 Policy Statement, an applicant not subject to state or federal regulatory oversight generally would not have been eligible to become a participant. However, since 1990 DTC has admitted a small number of non-U.S. entities as participants if their obligations to DTC are guaranteed by participants deemed creditworthy by DTC. In lieu of requiring non-U.S. entities to obtain such guarantees, the rule change establishes admissions criteria that will permit a well-qualified non-U.S. entity to obtain direct access to DTC's services. To the extent that the 1990 Policy Statement is inconsistent with the rule change, the rule change amends the 1990 Policy Statement.

⁵ These undertakings and agreements include irrevocably waiving all immunity from DTC's attachment of the non-U.S. entity's assets, submitting to the jurisdiction of a U.S. court, and waiving any objection to venue in a U.S. court. In addition, the non-U.S. entity must designate an agent in New York to receive service of process, provide DTC with all regulatory filings made in the non-U.S. entity's home country, and furnish DTC with all financial reports or other information as requested by DTC, with all fiscal information presented in U.S. dollar equivalents. The additional undertakings and agreements are set forth in DTC's Policy on Admissions of Foreign Entities which is set forth in Exhibit B to DTC's filing and is available for review and copying at the principal office of DTC and the Commission's Public Reference Room.

⁶ DTC Rules 2 and 3 set forth the basic standards for the admission of DTC participants. These rules provide, among other things, that the admission of a participant is subject to an applicant's demonstration that it meets reasonable standards of financial responsibility, operational capability, and character at the time of its application and on an ongoing basis thereafter.

⁴ *Id.*